

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

OP.No. 21221 of 2002(S)

**OA.455/2000 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM
BENCH**

PETITIONERS:

- 1. UNION OF INDIA, MINISTRY OF REILWAYS
(RAILWAY BOARD), REPRESENTED BY ITS CHAIRMAN,
NEW DELHI.**
- 2. SOUTHERN RAILWAY REPRESENTED BY ITS
GENERAL MANAGER, CHENNAI 600 003.**
- 3. CHIEF PERSONNEL OFFICER, SOUTHERN
RAILWAY, CHENNAI -600 003**
- 4. DIVISIONAL RAILWAY MANAGER, SOUTHERN
RAILWAY, TRIVANDRUM.**
- 5. DIVISIONAL RAILWAY MANAGER,
SOUTHERN RAILWAY, PALGHAT.**
- 6. DIVISIONAL PERSONNEL OFFICER,
SOUTHERN RAILWAY, TRIVANDRUM.**
- 7. SENIOR DIVISIONAL PERSONNEL OFFICER
SOUTHERN RAILWAY, PALGHAT.**
- 8. DIVISIONAL ACCOUNTS OFFICER,
SOUTHERN RAILWAY, PALGHAT.**

BY ADV. SRI.VARGHESE P.THOMAS, SR.SC,RAILWAYS

RESPONDENTS:

- 1. T.N.SUKUMARAN, RETIRED WELFARE
INSPECTOR, SOUTHERN RAILWAY RESIDING AT
A.K.SADANAM, MURINJAKAL P.O. (VIA) KOODAL,
TALUK KOZHENCHERRY,. PATHANAMTHITTA DISTRICT,
KERALA.**

O.P.21221/2002

**2. REGISTRAR, CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH, KERALA.**

**BY ADV. SRI.M.P.KRISHNAN NAIR
SRI.KRISHNAN NANDAKUMAR
SRI.VADAKARA V.V.N.MENON**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 02/04/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

O.P.21221/2002

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORDER OF THE CAT, ERNAKULAM BENCH DATED 12.4.2002 IN O.A.455/2000.

EXT.P2: COPY OF THE FINDINGS OF THE DISCIPLINARY AUTHORITY.

EXT.P3: COPY OF THE ORDER OF THE CHIEF PERSONNEL OFFICER.

/TRUE COPY/

J.B. KOSHY and T.R.RAMACHANDRAN NAIR, JJ.

O.P. No. 21221 of 2002 S

Dated this the 2nd day of April, 2007

Judgment

Koshy, J.

First respondent was employed in the Southern Railway. While he was working as Welfare Inspector in the Thiruvananthapuram Division of the Southern Railway, he was assigned the work of supervising and assisting the two Chief Supervisors engaged in the examination conducted by the Railway Recruitment Board. While so, he was placed under suspension with effect from 30.5.1990 and he was issued with a memorandum of charges. Two further charges were also issued finally by Annexure A17 on 14.8.1995. Even though first respondent challenged the same, there was a direction to dispose of the enquiry proceedings as expeditiously as possible. However, before conducting enquiry, he retired from service on 31.8.1995. As provided under rule 9 of the Railway Services (Pension) Rules, enquiry was conducted. The enquiry officer found him guilty. Ext.P2 is stated to be the finding of the enquiry officer. The enquiry officer found as follows:

"I hold that Shri T.N. Sukumaran, WI/PGT (Rtd. on 31.8.95) while working as a Supervisor at Sree Narayana College for Women, Quilon, in connection with the RRB written examination held on 12.11.89, failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant and contravened rule 3 (1) (i), (ii) and (iii) of the Railway Services (Conduct) Rules, 1966."

By Annexure A23 President's order and after considering the enquiry report and other circumstances, he is entitled to get 50% of the pension otherwise admissible to him. The order reads as follows:

"The President has considered the report of the Inquiry Officer appointed to inquire into the charges levelled against Sri.T.N. Sukumaran, retd.Welfare Inspector/PGT Division vide charge memorandum No.V/VO/1064/210/89-J/392 dated 14.8.1995. The UPSC has also been consulted by the President as required under the rules. A copy of the Commission's advice as contained in their letter No.F.3/397/98-S.I dated 14.6.1999 is enclosed.

After taking all the facts and circumstances of the case into account, the President has observed that all the charges levelled against Sh.Sukumaran are proved on

the basis of oral and documentary evidence on record, and has therefore, decided that a cut of 50% in the pension otherwise admissible to Sh.Sukumaran, be imposed upon him for a period of five years.

By order and in the name of the President."

2. First respondent filed O.A. before the tribunal challenging the above order. The Tribunal set aside the above order because even though the enquiry officer stated to have filed the report against him, the disciplinary authority has not considered the matter and without finding of the disciplinary authority his pension cannot be reduced. The tribunal held as follows:

"Under proviso to sub-rule 2 of rule 9 it is mandatory that the authority which instituted the proceedings should record a finding as to whether the ex-Railway servant was guilty or not and submit a report to the President. Only if the pensioner is found guilty of a grave misconduct in a departmental or judicial proceedings, the powers reserved with the President for withholding or withdrawing his pension can be issued. In this case there is no finding by the 4th respondent who instituted the proceedings. Since pension is not bounty but a property as has been held by the Apex

Court in a catena of decisions, the pensioner cannot be deprived of it except in accordance with the procedure laid down in the rules."

This original petition is filed challenging the order of the tribunal setting aside the presidential order reducing the pension payable to the first respondent. Petitioner produced Ext.P3 order passed by the appellate authority on a representation filed by him. It starts as follows:

"I have gone through the charge sheet, inquiry report, disciplinary authority's speaking orders and the representation of Shri T.K. Sukumaran erstwhile welfare inspector TVC/PGT Division."

The appellate authority has agreed with the finding of the enquiry officer and order of the disciplinary authority and recommended withholding of DCRG and 10% cut in the pension. But, Ext.P3 has not been challenged before the tribunal. Even the disciplinary authority's order or Ext.P2 was not produced. In the above circumstances, petitioner may produce disciplinary authority's order (Ext.P2), enquiry officer's report and Ext.P3 appellate authority's order and the matter has to be reconsidered by the Central Administrative Tribunal.

Ext.P1 is set aside. The original petition is allowed by way of remand. First respondent is entitled to take all his contentions including the contentions already raised. Both parties can also file additional pleadings and documents.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

vaa

**J.B. KOSHY AND
T.R.RAMACHANDRAN NAIR, JJ.**

O.P. No.21221/2002 S

Judgment

Dated:2nd April, 2007